Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Petition of Core Communications, Inc. for	) WC Docket No. 06-100
Forbearance from Sections 251(g) and 254(g) of the	)
Communications Act and Implementing Rules	)

COMMENTS OF
THE WESTERN TELECOMMUNICATIONS ALLIANCE

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Dated: June 5, 2006

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SUMMARY

The Western Telecommunications Alliance ("WTA") opposes the petition of Core Communications, Inc. ("Core") for forbearance from the provisions of Section 251(g) of the Communications Act preserving switched access charges and from the provisions of Section 254(g) relating to rate averaging and rate integration. WTA particularly opposes Core's attempt to scrap precipitously "for all telecommunications carriers" the entire established system of interstate access charges, and to replace it with the negotiated reciprocal compensation process of Section 251(b)(5), without significant industry input or discussion.

WTA agrees with Core that the present patchwork of intercarrier compensation mechanisms needs to be revised and rationalized. However, WTA completely disagrees with Core's baseless factual assumptions regarding the strength and positions of the "rural LEC lobby" and the nature of "regulatory arbitrage," as well as its flawed reasoning that a flash-cut elimination of access charges constitutes a feasible approach to intercarrier compensation reform.

WTA submits instead that the issues, options and impacts of intercarrier compensation reform are difficult and complex, and will be much more effectively considered and addressed by a notice and comment rulemaking such as that pending in CC Docket No. 01-92. Rather than "making reform next to impossible," WTA notes that Bell Operating Company and/or rural telephone company groups have previously submitted reform proposals in CC Docket No. 01-92, and are presently engaged in substantial negotiations in conjunction with the NARUC Task Force on Intercarrier Compensation to develop a comprehensive plan for intercarrier compensation.

Core's proposed "ignore the complexities, stop the negotiations and discussions, and do it immediately by forbearance" approach would have a sudden and disruptive impact upon the revenue streams and operations of rural telephone companies and other local exchange carriers. The ultimate result would be both short-term and long-term decreases in service quality due to operating budget reductions and investment cut-backs. In addition, sudden losses of access revenues would require increases in local service rates and/or High Cost Fund support much larger than would be the case if intercarrier compensation reform were implemented in a more gradual and reasoned manner.

The Commission should deny Core's forbearance petition in its entirety. Moreover, it should reject it promptly and summarily, so that others will be discouraged from misusing forbearance petitions to attempt to circumvent the industry negotiations and rulemakings necessary to consider and resolve critical and complex matters like intercarrier compensation.

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COMMENTS OF
THE WESTERN TELECOMMUNICATIONS ALLIANCE

The Western Telecommunications Alliance ("WTA") opposes the petition filed by Core Communications, Inc. ("Core") on or about April, 27, 2006 for forbearance from: (1) Section 251(g) of the Act and its implementing rules "to the extent they apply to or regulate the rate for compensation for switched 'exchange access, information access, and exchange services for such access to interexchange carriers and information service providers' pursuant to state and federal access charge rules" and (2) "any limitation by [Commission] rule or otherwise, on the scope of Section 251(b)(5) that is applied from Section 251(g) preserving receipt of switched access charges." WTA also opposes Core's request for forbearance from Section 254(g) and its implementing rules relating to rate averaging and rate integration for interexchange telecommunications services.

In essence, Core is asking the Commission to scrap precipitously "for all telecommunications carriers" the entire established system of interstate access charges (and perhaps the system of intrastate access charges as well). Core wants the Commission instead to require intercarrier compensation for long distance toll and other interexchange traffic, as well as for local traffic, to be negotiated and determined via the reciprocal compensation process of Section 251(b)(5). Core asks the Commission do this without significant industry input or

discussion via a forbearance order, or via inaction upon Core's forbearance petition until it is deemed granted on or about April 27, 2007.

WTA agrees that revision and rationalization of the existing intercarrier compensation is necessary. However, the issues, options and impacts of intercarrier compensation reform are difficult and complex, and will be much more effectively considered and addressed by a notice and comment rulemaking that permits all interested parties to provide their input. WTA notes that the Commission already has pending in CC Docket 01-92 a rulemaking to consider alternatives for the development of a unified intercarrier compensation regime, and that (contrary to Core's rants that the "overwhelming strength" of their lobbies "make reform next to impossible") industry groups containing Bell Operating Companies and/or rural telephone companies (i.e., the Intercarrier Compensation Forum, the Expanded Portland Group and the Alliance for Rational Intercarrier Compensation) have submitted reform proposals in that proceeding. Moreover, at the present time, industry representatives are engaged in substantial negotiations in conjunction with the National Association of Regulatory Utility Commissioners ("NARUC") Task Force on Intercarrier Compensation to develop a comprehensive new plan for intercarrier compensation.

Core's proposed "ignore the complexities, stop the negotiations and discussions, and do it immediately by forbearance" approach would have a sudden and disruptive impact upon the revenue streams and operations of rural telephone companies and other local exchange carriers. The ultimate result would be harm to consumers (rather than protection of them, as required by Section 10(a)(2) of the Act) by reduction of the quality of their technical service and customer service in both the short run (for example, by forcing carriers to cut staff, maintenance and other operating budgets to adjust for precipitous access revenue decreases) and the long run (for

example, by giving carriers and their lenders little choice but to cancel or postpone plans for investment in future network additions and improvements). In addition, sudden and sharp decreases in critical access revenue streams are likely to require increases in local service rates and/or High Cost Fund support much larger than would otherwise be the case if access reform were designed and implemented in a well-thought-out manner (including reasonable transition periods and mechanisms).

The Commission should deny Core's forbearance petition in its entirety. Moreover, it should reject it promptly and summarily, so that others will be discouraged from misusing forbearance petitions to attempt to circumvent the industry negotiations and rulemakings necessary to consider and resolve critical and complex matters like intercarrier compensation.

The Western Telecommunications Alliance

The Western Telecommunications Alliance is a trade association that represents approximately 250 rural telephone companies operating west of the Mississippi River.

WTA members are generally small independent local exchange carriers ("ILECs") serving sparsely populated rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange.

WTA members serve remote and rugged areas where loop, transport and switching costs per customer are much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these areas, the WTA member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

WTA members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to the rain forests of Hawaii to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Predictable and sufficient cost recovery is essential to WTA members if they are to continue investing in and operating telecommunications facilities in high-cost rural areas, while providing their rural communities and customers with quality and affordable services reasonably comparable to those available in urban areas. Therefore, WTA has found it necessary to participate in this and other proceedings that may affect critical interstate access charge and/or federal high cost support revenue streams.

Core Communications, Inc.

Core claims to be a Competitive Local Exchange Carrier ("CLEC") based in the Mid-Atlantic States, which focuses on "bridging the gap between Carriers/Internet Service Providers (ISPs) and their end users." http://www.coretel.net/ourcompany.htm. It asserts that it has "achieved interconnection with the RBOC network throughout Maryland, Delaware, Pennsylvania and [New York City]", and that it operates "data centers in Baltimore, Damascus, Easton and Mount Airy [Maryland], Philadelphia, Pittsburgh, Harrisburg, Altoona, Wilkes-Barre [Pennsylvania], and [New York City]." *Id.* Core claims to offer "Internet connectivity and enhanced services," plus a "suite of wholesale services including VoIP Networking, Fax to Email, Managed Modems and Bandwidth Solutions." *Id.*

Core's major gripe appears to be that the Commission's various orders removing ISP-bound traffic from the scope of traffic subject to reciprocal compensation under Section

251(b)(5) of the Act[1] eliminated a very lucrative revenue stream that Core had developed by inserting itself between Bell Atlantic and various ISPs. Core devotes almost half of its forbearance petition to complaints that Bell Atlantic changed its advocacy position on reciprocal compensation after the one-way nature of ISP-bound traffic became clear, and that the Commission "as a result of an intense incumbent LEC lobbying effort" erroneously reversed its initial position that CLECs "terminating" traffic from the public switched telecommunications network to ISPs were entitled to reciprocal compensation. *Core Petition, pp. 4-8, 9-15.*

Core's complaints about the Commission's handling of ISP-bound traffic do nothing to suggest (much less, prove) that the Commission should eliminate access charges and/or geographic toll rate averaging by granting Core's forbearance petition or by failing to deny it before April 27, 2007. However, it is notable that Core claims to have obtained the "elimination" of the Commission's *ISP Remand Order* by filing a forbearance petition that was not denied by the Commission in timely fashion, and that Core presently is pursuing an appeal asserting such "elimination" of the *ISP Remand Order* before the U.S. Court of Appeals for the District of Columbia Circuit in Case No. 04-1368. *Core Petition, n. 2.*

Forbearance Is Neither a Necessary
Nor a Feasible Way to Rationalize Intercarrier Compensation

WTA agrees with Core on one point – namely, that the present patchwork of intercarrier compensation mechanisms needs to be revised and rationalized. However, WTA completely disagrees with Core's baseless factual assumptions, flawed reasoning and simplistic remedy.

Given that its operations are concentrated in New York City, Maryland and Pennsylvania, Core would not be expected to have much familiarity with rural telephone companies. This is

[1] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic,* 11 FCC Rcd 15499 (1999) ("*ISP Order*"); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic,* 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*")

particularly evidenced by Core's fantasy that the "rural LEC and Bell Operating Company lobbies" have been able to "bully" the Commission into establishing intercarrier compensation regulations that favor them, and that these "lobbies" have the "overwhelming strength" to make intercarrier compensation reform "next to impossible." *Core Petition, p. 4.* The alleged "Bell Operating Company lobby" can speak for itself, but it is certainly news to WTA and other members of the alleged "rural LEC lobby" that they possess the "overwhelming strength" to "bully" the Commission into doing anything. Moreover, as noted above, WTA members and other rural telephone companies have not been making intercarrier compensation reform "next to impossible," but rather have been working long and intensively with various industry groups and the NARUC Task Force to develop intercarrier compensation reform plans.

Core's allegation that incumbent local exchange carriers have been engaging "in regulatory arbitrage to collect above-cost intercarrier compensation rates and pay below-cost intercarrier compensation rates" is also news to WTA members. *Core Petition, p. 3.* The "regulatory arbitrage" with which WTA members and other rural telephone companies are familiar consists of attempts by some interexchange carriers, prepaid long distance providers, wireless carriers, and VoIP providers to classify or disguise their traffic as traffic that is subject to access charge rates lower than those that are properly applicable.[2] WTA members and other rural telephone companies are also unfortunately familiar with fraudulent attempts to evade access charges entirely, such as the omission or stripping of data that would identify originating carriers and locations (otherwise known as the "phantom traffic" problem).

[2] For example, some interexchange carriers have employed elaborate call routing patterns or other ruses to make intrastate toll traffic appear to be interstate toll traffic subject to lower access charge rates. Other interexchange carriers and prepaid toll service providers have sought classification of their interstate toll calls as "information service traffic" in order to avoid access charges.

What Core does not seem to understand is that access charges are necessary to recover the substantial costs of constructing and operating local exchange networks, and to encourage and enable investment in the future upgrades and expansions of such networks. Notwithstanding all the hype about technological advances and converging services (as well as the disinterest of some in "legacy" services and networks), the fact remains that very substantial amounts and proportions of voice, data, video, Internet, wireless and VoIP traffic are originated, transported and/or terminated over traditional wireline local exchange networks, and will continue to be carried over such networks during the foreseeable future. Although wireless and VoIP services may be "technological alternatives to traditional telephony services" (*Core Petition, p. 16*) in some respects, wireline local exchange networks remain necessary for the carriage and completion of many of their calls.

Wireline local exchange networks are very expensive (both in relative and absolute terms) to construct, operate, maintain and upgrade. In urban areas, wireline networks must connect thousands, hundreds of thousands or millions of customers over or under busy thoroughfares and expensive easements. In rural areas, customer loops must be constructed and maintained over long distances (sometimes, 10-to-50 miles) that are frequently exacerbated by difficult terrain and/or climate conditions, while switching expenses can also be very high due to a lack of economies of scale.

Given the greater expense of wireline local exchange networks, there would be little or no incentive for carriers (and their owners and lenders) to construct, operate, maintain and upgrade them if other carriers and service providers could use them to carry their traffic for free or otherwise well below the true cost of their usage. The goal of intercarrier compensation reform is to eliminate arbitrage and to have carriers and service providers pay the true cost of

their use of local exchange networks. To the extent that this difficult and complex task can be accomplished, telecommunications and information service pricing, and telecommunications network investment decisions, will become more optimal.

At the time that the access charge mechanism was developed in connection with the AT&T divestiture, it was intended to replace the former Bell System settlements and to permit local exchange carriers to bill and collect compensation for originating and terminating the traffic of multiple interexchange carriers, including at least some with which they would have little or no continuing relationship. The National Exchange Carrier Association tariffs and pools permitted hundreds of very different rural telephone companies to recover their costs while affording interexchange carriers the benefit of nationwide interstate access charges. In contrast, the reciprocal compensation mechanism that was added to the mix by the Omnibus Budget Reconciliation Act of 1993 and the Telecommunications Act of 1996 was intended to be negotiated primarily on a bilateral basis by and between incumbent local exchange carriers, competitive local exchange carriers and/or wireless carriers that served overlapping areas, interconnected directly with each other and/or exchanged substantial amounts of traffic.

WTA recognizes that the existing patchwork of interstate access charges, intrastate access charges, access charge exemptions, and reciprocal compensation agreements needs to be revised and rationalized. Moving the rates for originating, transporting and terminating similar types of traffic to similar levels is an important aspect of this rationalization. However, there are numerous and complex additional issues to be resolved, including but not limited to: (a) permitting appropriate cost recovery; (b) maintaining affordable rates for basic services; (c) minimizing revenue, cost and rate fluctuations; (d) determining the impact upon universal service and universal service support levels; (e) assigning interconnection points and

responsibility for transport costs; and (f) maintaining appropriate access and pricing for tandem switches and transport networks.

As the Commission recognized in its *Further Notice of Proposed Rulemaking* (Developing a Unified Intercarrier Compensation Regime), FCC 05-33, released March 3, 2005, in CC Docket No. 01-92, several industry groups, including the Intercarrier Compensation Forum ("ICF"), the Extended Portland Group ("EPG") and the Alliance for Rational Intercarrier Compensation ("ARIC")[3], have worked long and hard to develop intercarrier compensation proposals and alternatives that attempted to address some or all of these complexities. Presently, members of these groups have been working intensively with NARUC's Task Force on Intercarrier Compensation to try to develop an intercarrier compensation plan to present to the Commission.

The most effective and efficient way to address the complexities of intercarrier compensation is to permit the NARUC Task Force to continue its efforts to negotiate a plan acceptable to substantial segments of the industry. Once such a plan is completed and presented to the Commission in CC Docket No. 01-92, all interested parties (including Core) will have an opportunity to support, oppose or otherwise comment upon the plan and/or various aspects thereof. The Commission will then have a substantial record upon which it can evaluate the issues and alternatives, and make a well-reasoned decision regarding future intercarrier compensation requirements, procedures and mechanisms.

In stark contrast, Core's proposed flash-cut elimination of access charges via forbearance would be an unmitigated disaster. The current reciprocal compensation mechanism is designed for bilateral negotiations among parties with substantial local contacts and exchanged traffic. Such bilateral negotiations would be extremely expensive and unduly burdensome for parties

[3] Subsequently, the EPG and ARIC groups merged to form the Rural Coalition.

that serve substantially different areas and that exchange traffic sporadically or in moderate amounts. Put simply, if access charges were eliminated abruptly and all present and future intercarrier compensation were required to be negotiated via the existing reciprocal compensation procedures, many rural telephone companies would not be able to obtain the requisite reciprocal compensation agreements for some time (if ever) with many of their former access customers.

Access charges comprise a substantial portion of the revenue streams of rural telephone companies. For example, many WTA members derive from 25 percent to 55 percent of their revenues from access charges. If all or major parts of these revenue streams were to vanish suddenly due to Core's proposed elimination of the access charge system, many rural telephone companies would not be able to pay their operating expenses and/or to proceed with their investment plans. In the worst case, some rural carriers would have to reduce their employment, maintenance or other expenses, thereby reducing the quality of service furnished to their customers. Other rural carriers might be able to increase their local service rates to offset their access revenue shortfall, thereby saddling their customers with higher (and possibly unaffordable rates) rather than lower quality service. Even in the best case, rural carriers able to avoid immediate service and expense reductions or local rate hikes are likely to have to cut back on their investment projects, thereby curtailing the service quality and service options of their customers in the long run. Ultimately, the federal High Cost Fund might cover some of the access revenue losses; however, it is subject to delays and caps that would adversely impact cash flow and cost recovery.

WTA recognizes that intercarrier compensation reform like that under consideration in CC Docket 01-92 may well lead to higher subscriber line charges ("SLCs") and other local

service rates, as well as to increases in federal High Cost support. However, in a rulemaking proceeding, such increases can be planned, and changes can be spread over appropriate transition periods to avoid consumer rate shock and/or carrier cash flow disruptions. In the end, the customer rate increases and federal High Cost Fund support increases resulting from a plan considered and adopted in an industry rulemaking are likely to be substantially lower than those that would result from Core's proposed sudden and complete elimination of access charges.

In sum, Core's proposed forbearance: (1) is likely to lead to higher customer rates and/or federal High Cost Fund support than other intercarrier compensation reform options; (2) is likely to harm rural consumers by eliminating access revenues needed to maintain their present quality of service and to invest in upgrades and additions essential for their future services and service quality; and (3) is not as likely as the ongoing CC Docket No. 01-92 rulemaking to produce a well-reasoned and appropriate intercarrier compensation mechanism and implementation period that will serve the public interest. Therefore, Core's proposal has met none of the criteria for forbearance in Section 10(a) of the Communications Act, and should be denied.

Forbearance from Toll Rate Averaging and
Toll Rate Integration Is Not Warranted

Section 254(g) of the Communications Act is a consumer protection provision, and was inserted by Congress into the 1996 Act to ensure that rural customers would continue to receive long distance toll services at rates comparable to those charged to urban customers. *Conference Report 104-458*, pp. 123, 125, found at http://thomas.loc.gov.

WTA has no idea where Core got its notion that Section 254(g) codifies "regulatory arbitrage and implicit subsidies flowing from customers in low-cost areas served by IXCs to customers in high-cost service areas." *Core Petition, p. 9.* Core makes no attempt whatsoever to explain how local exchange carriers became "armed" with this alleged toll rate "subsidy" from

"customers in low-cost areas" to "customers in high-cost areas," or to show how this alleged toll rate "subsidy" frees such local exchange carriers to "charge below-cost rates" (presumably, for local exchange service rather than for long distance toll service) and to "preclude[e] competition and innovation." *Id.*

Core's arguments make no sense on their face, and wholly fail to meet the Section 10(b) criteria for forbearance from Section 254(g) of the Act. Therefore, this portion of Core's forbearance petition should also be denied.

Summary Denial Is Required to
Discourage Similar Forbearance Petitions

Because Section 10(c) of the Act permits forbearance petitions to be deemed granted if the Commission does not deny them within one year after their filing, simplistic petitions like the present one pose a very real danger that they will be overlooked and inadvertently deemed to be granted after a year. In fact, Core itself appears presently to be prosecuting an appeal before the D.C. Circuit claiming that the Commission's failure to deny its prior petition for forbearance from the *ISP Remand Order* in timely fashion resulted in the "elimination" of that order. *Core Petition, n. 2.*

Core is not the first entity to petition for forbearance from substantial portions of the Communications Act provisions and Commission rules relating to access charges.[4] There is a significant danger that other parties will follow Core and file similar forbearance petitions in the hope that one will slip through the cracks and allow certain carriers to claim that they are no longer required to pay access charges.

[4] See, e.g., Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. §160(c) from Enforcement of 47 U.S.C. §251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 03-266, Petition For Forbearance (filed Dec. 23, 2003).

The Commission should not allow such a tactic to circumvent its rulemaking powers and deliberations. Whereas the Commission cannot prohibit or prevent the filing of repetitive and unmeritorious forbearance petitions, it can discourage them by denying them promptly and summarily.

There is Commission precedent for this. In the early 1980's, the former Mobile Services Division was plagued by large numbers of petitions to deny license applications by new paging and mobile telephone carriers trying to enter new markets. The Division solved its problem by issuing brief and virtually identical one-paragraph orders denying such petitions, and by doing so very rapidly after the end of each pleading cycle. Once they realized that their petitions to deny would be immediately and summarily rejected, most would-be petitioners stopped filing them.

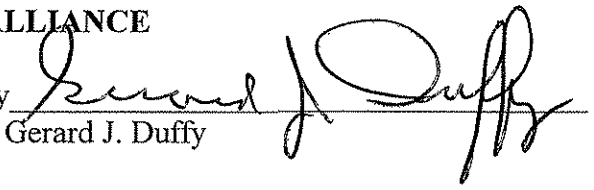
The same approach would be helpful to discourage Core's and other attempts to short circuit intercarrier compensation negotiations and rulemakings via forbearance petitions. Shortly after the designated June 26, 2006 Reply Comment date, the Commission can and should issue a brief order stating that Core has failed to present sufficient and persuasive evidence to allow the Commission to determine that the standards set forth in Section 10(a) would be satisfied by grant of Core's forbearance requests, and that Core's petition is therefore denied in its entirety. Such a rapid rejection will discourage similar filings, and preclude the possibility that the Core petition will be overlooked inadvertently in the press of Commission business and be deemed granted on April 27, 2007.

Conclusion

Core's baseless factual assumptions and flawed reasoning wholly fail to satisfy the Section 10(a) forbearance criteria that would warrant the scrapping of existing access charge mechanisms as well as the statutory system of rate averaging and rate integration for

interexchange telecommunications services. The Commission should reject Core's simplistic forbearance remedy in its entirety, and instead continue to consider the difficult and complex issues, options and impacts of intercarrier compensation reform in its pending CC Docket 01-92 rulemaking. The Commission should deny Core's petition promptly and summarily, so that others will be discouraged from misusing forbearance petitions to circumvent the ongoing industry negotiations and rulemakings that will produce a more effective and efficient solution.

Respectfully submitted,
THE WESTERN TELECOMMUNICATIONS ALLIANCE

By 
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